



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

September 10, 2002

Number: **INFO 2002-0190**
Release Date: 9/30/2002
UIL # 9114.03-13

CC:INTL:Br1: [REDACTED]
GENIN-136355-02



Reference: Application of U.S.-Germany Treaty To IRA Distributions

Dear [REDACTED]

We are responding to your letter to the Department of the Treasury dated March 2, 2002. Your letter did not reach our office until July 8, 2002.

You have requested general information regarding the application of the United States - Germany Income Tax Treaty ("Treaty"), reprinted in 2 Tax Treaties (CCH) ¶ 3249, to IRA distributions received by German citizens after returning to Germany. The funds were contributed to a qualified retirement plan during employment in the United States. After employment was terminated, the funds were transferred to an IRA rollover account. The employee received an early distribution of the funds in the IRA account after returning to Germany. You have asked whether the early distribution qualifies for exemption from U.S. income tax under Article 18 of the Treaty.

In response to your request, we are providing the following general information pursuant to section 2.04 of Revenue Procedure 2002-1, 2002-1 I.R.B.1 (Jan. 7, 2002). This information letter is advisory only and has no binding effect on the Internal Revenue Service. If you require a definitive determination of the law applicable to your particular facts, you should submit a request for a private letter ruling pursuant to the rules set forth in section 8 of Revenue Procedure 2002-1. The revenue procedure is available on the Internet at http://www.irs.gov/ind_info/bullet.html. The IRS website also contains tax forms and instructions.

Article 18(1) (Pensions, Annuities, Alimony, and Child Support) of the Treaty provides as follows:

Subject to the provisions of Article 19 (Government Service; Social Security), pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

GENIN-136355-02

The 1996 U.S. Model Income Tax Treaty ("Model Treaty"), reprinted in 1 Tax Treaties (CCH) ¶ 214, contains a provision similar to Article 18 of the Treaty. The Treasury Department Technical Explanation to the Model Treaty sets forth the requirements that a pension distribution must satisfy to qualify for exemption from U.S. taxation under the pension article. The Technical Explanation contains the following:

In addition, certain distribution requirements must be met before distributions from these plans would fall under paragraph 1. To qualify as a pension distribution or similar remuneration from a U.S. plan the employee must have been either employed by the same employer for five years or be at least 62 years old at the time of the distribution. In addition, the distribution must be made either (A) on account of death or disability, (B) as part of a series of substantially equal payments over the employee's life expectancy (or over the joint life expectancy of the employee and a beneficiary), or (C) after the employee attained the age of 55. Finally, the distribution must be made either after separation from service or on or after attainment of age 65.

When a distribution does not qualify as a pension distribution under Article 18, the distribution is subject to taxation in the United States as income from employment. Article 15 (Dependent Personal Services) of the Treaty provides that

salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State.

The Model Treaty contains a provision that is similar to Article 15(1) of the Treaty. The Technical Explanation to the Model Treaty explains that "Article 15 also applies regardless of the timing of actual payment for services." It states that "a person who receives the right to a future payment in consideration for services rendered in a Contracting State would be taxable in that State even if the payment is received at a time when the recipient is a resident of the other Contracting State."

We hope this information is helpful to you. As noted above, if you require a definitive determination of the law applicable to your particular facts, you should submit a request for a private letter ruling.

Sincerely,
M. Grace Fleeman
Senior Counsel
Office of Associate Chief Counsel
(International), Branch 1